IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1003 OF 2006

Rajubhai Mohd. Rashid Mistry ....Applicant.

V/s

The State of Maharashtra
(Through ACP, D-1/South,
DCB-CID, Mumbai) ....Respondents.

Mr. Shahid Azmi for the applicant.
Ms. Rajeshree Gadhvi, APP for the State.

CORAM: V.M. KANADE, J.

DATE: 13th June, 2006

P.C.

1. This is an application for bail filed by the applicant who was arrested on 6/12/2005 by the DCB, CID, Unit-1 from Arthur Road Jail and was produced before the MCOCA Special Judge for police remand.

2. The learned Counsel appearing on behalf of the applicant submitted that on 5/3/2006, stipulated period of 90 days as envisaged under section 21 of MCOCA was over and no charge-sheet was filed by the Police. It is further submitted that on 6/3/2006, the applicant served a copy of the bail application on the prosecutor's Office at 11.32 a.m. and, at 11.40 a.m., he filed bail application for grant of bail under section 167(2) read with section 21 of the MCOCA. The

remand application was called out on the same day at 3.00 p.m. and charge-sheet was filed in the Court and, thereafter, copy of the charge-sheet was given to the applicant-accused. The bail application of the applicant was taken up at 3.00 p.m. and the Court rejected the bail application. The learned Counsel appearing on behalf of the applicant submitted that since the bail application was filed by the applicant at 11.40 a.m. on 6/3/2006 before the charge-sheet was filed against him, an indefeasible right for bail had accrued to the applicant on account of failure of the prosecution to file charge-sheet within 90 days. He submitted that the period of 90 days was over on 5/3/2006 and, therefore, the applicant was entitled to be released on bail. The learned advocate has invited my attention to the roznama. He also relied on the Judgment of the Supreme Court in the case of State of Maharashtra Vs. Mrs. Bharati Chandmal Varma @ Ayesh Khan reported in **2002 ALL MR (Cri) 1215 (S.C.)**. He also relied on various judgments on the same point.

3. The learned APP appearing on behalf of the State, on the other hand, submitted that the concerned Officer had already reached the Court at 11.00 a.m. for the purpose of filing the charge-sheet and it was physically tendered when the matter was called out.

It is submitted that, therefore, since the charge-sheet had already been filed before the bail application was taken up for hearing, the right under section 167(2) had not accrued in favour of the applicant.

4. I have perused the roznama. The roznama does not indicate that the bail application, as alleged by the applicant, was filed at 11.40 a.m. on 6/3/2006. The charge-sheet was filed on the same day. Since there is nothing on record except the bare word of the applicant that the bail application was filed before filing of the charge-sheet and since this allegation is not supported by any documentary evidence, it will have to be held that the charge-sheet was filed on the same day and, therefore, the right under section 167(2) does not accrue in favour of the applicant. The applicant therefore cannot seek bail on the ground of non filing of the charge-sheet as the same is not available to him. It is a settled position in law that merely because the period of 90 days is over, automatically the right would not accrue to the applicant and that the application for bail has to be filed. It is further settled position in law that if the charge-sheet is filed before such bail application is filed then such a right does not accrue in favour

of the applicant. The submissions made by the learned Counsel for the applicant, therefore, cannot be accepted. The applicant is entitled to file application for bail on merits. If such an application is filed, the Special Judge shall decide it as expeditiously as possible. Application is rejected.

5. Application is disposed of accordingly.

V.M. KANADE, J.